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Fifty-third session

SUMMARY RECORD OF THE 30th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 1 April 1997, at 10 a.m.

Chairman: Mr. SOMOL (Czech Republic)

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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

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(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (continued)

The meeting was called to order at 10.40 a.m.

STATEMENT BY MRS. SADAKO OGATA, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

1. Mrs. OGATA (United Nations High Commissioner for Refugees), paying tribute to the High Commissioner for Human Rights who had recently left his post, said that under his tenure field operations, for example in Rwanda, to restore human rights institutions and justice systems had dovetailed with UNHCR's activities on behalf of returning refugees to find comprehensive solutions to certain refugee problems. It was to be hoped that those initiatives would continue, since they were an effective means of supporting countries striving to promote respect for human rights.

2. With reference to the basic principles on which her Office was founded, she stressed the way in which the system of refugee protection fitted into the global human rights regime which was the Commission's raison d'être. Any weakening of the institution of asylum would lead to a weakening of human rights protection. While she was grateful to numerous Governments for offering sanctuary to millions of victims of persecution and conflict, she wished to underscore the current threat to asylum. Access to certain territories was becoming more and more difficult, or even impossible, as certain borders were closed and legislative restrictions were adopted on refugee reception. Safety during asylum was also threatened (deadly attacks on refugee camps, violence - sexual and otherwise - against refugee women and children, forced recruitment, abusive detention and acts of intimidation), while the voluntary nature of repatriation was increasingly being undermined by a mounting number of forcible returns in situations which were far from providing guarantees of safety.

3. It was true that the reception of refugees often led to serious problems for host countries. The number of refugees had mushroomed in the past few decades and mass exoduses had taken place in recent years from countries such as Afghanistan, Mozambique, Bosnia, Haiti, Iraq, Liberia and Rwanda. Asylum States understandably feared the economic, environmental and security problems caused by such population movements, which were often difficult to control. The refugee burden continued to be unevenly divided and the problem was compounded by an equally large increase in the number of internally displaced persons.

4. Population movements which mingled genuine asylum-seekers with persons escaping from economic hardship, armed elements and people who had committed crimes against humanity - as in the case of Zaire - or prison escapees - as in the case of Albania, posed enormous challenges to receiving States which were under increasing pressure from domestic public opinion.

5. Over the past few years, her Office had tried to develop new and innovative opportunities to prevent and solve refugee problems. The international community had shown increased willingness to back humanitarian operations in countries of origin to protect and assist populations in need, such as internally displaced persons. Despite those efforts, however,

displacement and suffering continued. As long as people's basic human rights could not be protected in their own countries and as long as their "right to remain" could not be guaranteed, asylum remained the most effective means of protection and must therefore be maintained.

6. She stressed the importance of preserving the tradition of asylum. In the short term, asylum was frequently the only way for lives to be saved, while in the longer term it allowed a search for solutions to conflicts and measures to be taken for national reconciliation, the reintegration of refugees and the rebuilding of institutions guaranteeing observance of human rights. Asylum had a proven track record, in part because it was a fair and balanced system, which linked the protection of human rights to solutions to refugee problems. The international instruments adopted in that field, such as the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1984 Cartagena Declaration on Refugees and the Status of UNHCR envisaged that a durable solution would be found for refugees by invoking the cessation of refugee status, voluntary repatriation and even naturalization of refugees. Another balancing benefit of asylum was in providing a sound legal basis not only for the recognition of refugees and the protection of their rights, but also for the exclusion of those who did not need or deserve international protection - for example, those who had committed abhorrent crimes. UNHCR had decided not to grant refugee status to Rwandans who had been indicted by the International Criminal Tribunal for Rwanda. That was an aspect of the asylum system which should receive much greater attention. The refugee protection regime was also balanced in that it provided crucial roles to be played by all actors in the process; the country of asylum had the obligation to provide international protection to refugees, while the country of origin had the obligation to welcome back returning refugees and ensure the protection of their rights, as it must do for the rest of its population. The international community was required to support those efforts and share the burden, both financial and moral, of caring for refugees; and refugees themselves had the duty to obey the laws of their country of asylum and contribute to the solution of their problem.

7. Asylum was therefore capable of evolution. In the 45 years of its existence, the 1951 Convention had been adapted to a variety of circumstances, including large-scale influxes of asylum-seekers or the protection of the rights of women, which were not, however, mentioned in the Convention. The dynamic nature of asylum allowed for pragmatic, creative and realistic approaches in fashioning responses to refugee problems, which were undeniably political, but which also had fundamental humanitarian and human rights dimensions that could be usefully taken into account in seeking to solve them. Despite its flexibility, the asylum system must be used with some degree of firmness so as not to lose its substance. The fundamental human rights principles on which it was based must continue to be respected, otherwise it would be difficult to defend the granting of asylum in what was often a difficult international and national political climate.

8. Asylum also offered the opportunity for human rights education which the refugees would take back to their countries when they returned. Her Office had recently taken initiatives to develop the teaching of human rights, education for peace and conflict resolution in refugee camps, in order to teach children, young people and adults to live together in a pluralistic environment where the rights of all were respected. One of the most important aspects of the work of protecting refugees was to prepare the ground for repatriation and reintegration in their countries of origin. Repatriation and reintegration were indispensable for reconciliation, itself indispensable for viable peace. All of the foregoing demonstrated the place of asylum and refugee protection in the human rights paradigm.

9. Greater emphasis needed to be placed on the right to remain in one's country and to return to it, the two "ends" of which asylum formed the middle. During the conflict in the former Yugoslavia, she had defended the "right to remain", or not to be displaced, as a simple response to the partisans of ethnic cleansing. The idea still needed to be clearly delineated in legal terms but it could help to avert forced displacement. As for the "right to return", new ways must be found to implement it effectively in the face of political obstacles. The Dayton Agreement, which was exemplary in many respects, was not being adequately implemented with regard to the right to return. Whereas 250,000 persons had already returned to areas in which their ethnic group was in the majority, very few refugees or displaced persons had been able to return to their homes in areas where they would currently be in a minority. Together with its partners, UNHCR was engaged in facilitating repatriation but it needed the concerted political and economic backing of the international community. Human rights and peace were at stake, Bosnia being a vivid example of the link between those two areas and refugee returns. She thus welcomed the joint commitment to minority returns drawn up the previous week between the two entities of Bosnia and Herzegovina, which would help to support the institution of asylum itself.

10. She appealed to the international community to take action on the ordeal of the Zairian civilians and the large number of Rwandan refugees caught up in the war in eastern Zaire. UNHCR had finally obtained access to several locations south of Kisangani to provide food and basic medical care to the refugees there and help Rwandans who wished to be repatriated. Progress was being made towards establishing humanitarian corridors. Together with UNICEF, UNHCR had, during the previous two weeks, managed to save and evacuate over 300 unaccompanied children. However, insecurity, politics and logistical constraints made its work more difficult than it had been in any other refugee situations she had encountered. It was a drama that had not received the international attention it deserved. She supported the requests for the investigation of allegations of serious human rights violations in Zaire and assured the Special Rapporteur on human rights in Zaire, Mr. Garretón, of UNHCR's cooperation.

11. In conclusion, she sought the support of States which were members of the Commission and concerned with human rights for her Office's efforts to strengthen the institution of asylum and the refugee-protection regime.

A strong commitment in that regard would not only promote the human rights observance system in its entirety but would also serve international peace and security and uphold the founding principles of the United Nations.

STATEMENT BY MR. WILLIAM RICHARDSON, PERMANENT REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS

12. Mr. RICHARDSON (United States of America) said that the defining trend of the end of the current millennium was the increasing empowerment of ordinary people to shape their destiny. In the various regions of the world, democracy had become a reality and the institutions of civil society were helping to ensure transparency and accountability at every level of government. From the spread of independent media to the creation of cyber-citizens across the globe, the ability of Governments to restrict the free flow of information and ideas was being steadily eroded.

13. There were, unfortunately, a number of regimes that had not changed at all and, by remaining silent in the face of oppression, the international community betrayed the dreams of peoples in search of freedom and justice and made their task more difficult.

14. The Commission's contribution to the fight to expand human rights and fundamental freedoms throughout the world had developed substantially over the years and it was hard to believe that, in 1947, it had adopted a resolution proclaiming that the United Nations "had no power to take any action in regard to complaints concerning human rights". The Commission was currently able, in public sessions, to consider human rights violations and to expose abuse wherever it might occur. Its monitors in the field provided it with crucial information on the fate of individuals. As a result of the Commission's moral authority and the record it had been able to accumulate, the international community could bring legitimate pressure to bear on Governments to end abusive practices. The vast amount of work achieved by the Commission meant that millions of people looked to it as their spokesman. It was not only the conscience of the nations of the world - a meeting place for human rights advocates to highlight their concerns - but also a forum where Governments were held accountable for their human rights abuses.

15. The situation in certain countries in 1997 once again required its attention. Those countries included Cuba, where, unfortunately, the authorities were always ready when it came to visions of new and exotic "rights", but never when it was a matter of basic human rights - freedom of speech or assembly, for example. Another perpetual disappointment was the situation of human rights in Burma. Despite the efforts of legitimate democratic leaders like Aung San Suu Kyi, the despotic rulers of that beleaguered land continued to insist that their own need for power must take precedence over the rights and aspirations of the Burmese people. In Sudan, too, the human rights situation remained extremely poor. Serious human rights abuses had been committed both by the regime and by the insurgent forces, but government forces had been responsible for massive human rights violations (extrajudicial killings, disappearances, forced labour, slavery, forced conscription of children, harassment, torture and arrest of political opponents, etc.).

16. Human rights abuses in Iran and Iraq were all too clear from the work of the Commission and its rapporteurs. An Iranian foundation had recently increased the reward for killing the British author, Salman Rushdie. Massive violations of international human rights law by Saddam Hussein against the civilian population of Irbil were only a recent example of the brutality with which he treated his people. Both regimes deserved strong condemnation by the international community.

17. The human rights situation in Central Africa and the former Yugoslavia were also a matter for concern. It would also be appropriate for the Commission to address the human rights situation in China. Chinese economic growth since 1978 had been accompanied by dramatic improvements in the lives of millions of Chinese. There had also been positive reforms in the rule of law. However, the Chinese Government continued to commit numerous human rights abuses and to restrict severely freedom of expression, of the press, of assembly, of association and of religion, in violation of internationally accepted norms. While not wishing to seek confrontation with China over that issue, his delegation firmly believed that the international community - and the Commission on Human Rights in particular - should hold the People's Republic of China accountable with regard to the international standards that China itself had endorsed.

18. Mr. LI Baodong (China), speaking on a point of order, said that his delegation would like to make use of its right of reply but, in order to facilitate the work of the Commission, would be prepared to do so later in accordance with the procedure proposed by the Chairman. It was unacceptable that an invited speaker should abuse the hospitality of the international community by his remarks.

19. Mr. RICHARDSON (United States of America) said that, although the Commission's agenda was already overcrowded and item 4 (Question of the violation of human rights in the occupied Arab territories, including Palestine) should be dropped altogether, his delegation was pleased that a new item on indigenous issues had been added the previous year. As a resident of New Mexico - a state where native Americans had made so many contributions to the richness of national life - he looked forward to an enhanced dialogue with the growing number of indigenous groups represented in the Commission and elsewhere within the United Nations system.

20. It was the Commission's duty to be a strong defender of the weakest people. But, as a new century approached, it was also necessary to ensure that the Commission operated as efficiently and as cost-effectively as possible. It needed to find better ways to provide more services directly to the peoples who required them and waste less time on outdated and meaningless resolutions. Many resolutions could simply be eliminated and others should be made biennial.

21. The Commission must not lose sight of its mission, namely, the promotion and protection of human rights and fundamental freedoms as set out in the Universal Declaration of Human Rights.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

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(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 8) (continued) (E/CN.4/1997/4 and Add.1, Add.2 and Corr.1 and Add.3, 7 and Add.1-3 and Corr.1, 25 and Add.1, 26, 27 and Add.1, 28, 29 and Add.1, 30, 31 and Add.1, 32-34, 55 and Corr.1, 103 and 104; E/CN.4/1997/NGO/3, 4, 7, 8, 20, 22, 23, 29, 50 and 80; E/CN.4/Sub.2/1996/16, 17 and 19 and Corr.1 and Add.1; A/51/465 and 561)

22. Mrs. SHAWL (International Islamic Federation of Students' Organizations) said that, since the Commission's fifty-second session, the situation of human rights in Indian-occupied Jammu and Kashmir had not changed. It was still extremely hazardous for an inhabitant of the region to expose the atrocities committed by the Indian armed forces and people like Jalil Andrabi, whose only fault had been to approach the Commission to ask that the rights of his people be protected, were regularly arrested and murdered. There were many cases of persons abducted by the pro-Government militants, and tortured, murdered, killed in detention or reported missing.

23. A team from the International Committee of the Red Cross (ICRC) had observed that prisoners held in the joint interrogation centre were badly and insufficiently fed and, as a result, were exposed to various diseases.

24. The conflict in Kashmir was a real tragedy for 13 million persons; the region's status quo could ignite new warfare between India and Pakistan, both nuclear powers, and destabilize south Asia with unforeseeable international consequences.

25. After the establishment of the United Nations, the people of Jammu and Kashmir had been among the first to have their right to self-determination recognized by the Security Council. Fifty years later, they were still awaiting the fulfilment of the Security Council's resolutions. Over the previous seven years, 50,000 persons had given their lives opposing oppression and India had sent 700,000 men to silence the people of Jammu and Kashmir. That was why the Commission's help was necessary to ensure respect for their right to self-determination.

26. Mr. ZIA (World Muslim Congress) said that it was the sacred duty of every individual to assist mankind in all parts of the world. He therefore urged the Commission to put an end to the undeclared war of 700,000 Indian

troops against the people of Jammu and Kashmir. Torture and other forms of cruel, inhuman or degrading treatment or punishment and enforced or involuntary disappearances formed part of a systematic pattern of human rights abuses to intimidate and subjugate the people of Indian-occupied Kashmir. In 1996 alone, more than 200 persons had died in custody and more than 2,600 civilians and Mujahedin, including women and children, had been brutally murdered by the Indian armed forces, which had also set fire to hundreds of houses, shops and stores and had arrested 3,890 persons, of whom only 697 had been released, despite court orders for the release of 3,000 persons.

27. The Indian occupation forces also intended to silence human rights militants and attacked members of their families whom they tortured and murdered. In the special interrogation centres, detainees arrested by the Indian armed forces or paramilitary forces were beaten, suspended by the feet or hands, stretched, burned or subjected to electric shocks or sexual molestation.

28. The Commission should take effective steps to protect the people of Jammu and Kashmir from those human rights violations. All nations should recommend the imposition of economic and trade sanctions against India until it put an end to human rights violations and kept its promise of holding a free and impartial plebiscite.

29. Mr. CHAKMA (Asian Cultural Forum on Development), speaking on behalf of a network of over 100 human rights NGOs in the Asia and Pacific region, said that the South Asian Governments, irrespective of their political colour, used torture as an administrative tool to suppress all democratic dissent and extract confessions from suspects. It was a matter for concern that torture was systematically practised with complete impunity in Pakistan, and that the Indian Government had not followed up the recommendation of the previous Chairman and current Chairman of the National Human Rights Commission of India that it should ratify the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

30. Several delegations, including those of China, India and Bangladesh, had taken the floor on the subject of the organization of the work of the Commission and the various mechanisms for the protection and promotion of human rights, and had expressed concern about the lack of coordination, overlapping of activities, indictment of States by various United Nations bodies and other issues. However, the response of some of the Governments to the Special Rapporteur on questions relevant to torture, whose work was a perfect example of cooperation and coordination with the other mechanisms for the protection of human rights, had been disdainful to say the least. The Government of Bangladesh had provided a single reply out of the 29 cases communicated to it and the Government of Nepal had not provided information on any of 22 cases.

31. Asian Governments felt overburdened by reporting procedures and made statements or submitted draft resolutions designed to micro-manage the operation of the Centre for Human Rights and the functioning of the special rapporteurs. Without, however, the allocation of substantial financial resources to the human rights mechanisms from the regular United Nations

budget, such initiatives could only lead to their political control. It must be borne in mind that the budget of the Centre for Human Rights for acting as secretariat of the Commission, the Sub-Commission, the international treaty bodies and the special procedures system accounted for only approximately one per cent of the total United Nations budget. If the preparation of reports was a burden for Governments, the urgent appeals of the special rapporteurs were often the victims' only remedy in the face of the unlawful acts committed by the agents of the States concerned.

32. The systematic pattern of disappearances in Bangladesh, India, Sri Lanka and Pakistan was a matter for extreme concern. As the report of the Working Group on Enforced or Involuntary Disappearances testified, the phenomenon had become as widespread as it had formerly been in Latin America. The use of such methods, coupled with impunity, compelled many innocent people to take the law into their own hands, thus creating a vicious circle of violence.

33. His organization drew the attention of the members of the Commission to the disappearance of Ms. Kalpana Chakma, General Secretary of a Bangladesh non-governmental organization (NGO), who had been kidnapped by members of the armed forces. That issue had also been raised by the Working Group and the Government of Bangladesh had announced that it had set up a commission of inquiry, the report of which had yet to be made public. Over the last 20 years, the Bangladesh Government had provided total immunity to the perpetrators of such acts and it had sometimes even set up commissions of inquiry for the sole purpose of diverting the suspicions of the international community.

34. Mr. CHOEPHEL (Society for Threatened Peoples) said that the denial of the rights of detainees was one of the most serious human rights violations because it not only brought unimaginable suffering, but ultimately contributed to the loss of a person's dignity. If the Governments responsible for such abuses were not called to account, they would only be encouraged to continue to act with impunity. The information contained in the reports of the Special Rapporteurs on questions relevant to torture (E/CN.4/1997/7), freedom of opinion and expression (E/CN.4/1997/31) and religious intolerance (E/CN.4/1997/91) and the Working Groups on Arbitrary Detention (E/CN.4/1997/4/Add.1) and on Enforced or Involuntary Disappearances (E/CN.4/1997/34), concerning the rights of detainees in China, Tibet and Eastern Turkestan (Xinjiang) was a good illustration. It was concluded that the practice of torture was endemic in police stations and detention centres in Tibet, that thousands of persons were arbitrarily held in work camps and prisons in Tibet, Eastern Turkestan and Inner Mongolia and that disappearances were occurring in Tibet and China. His organization urged the Chinese authorities to supply all the information requested by the Special Rapporteur on questions relevant to torture and the Working Group on Enforced or Involuntary Disappearances. It welcomed the fact that the Working Group on Arbitrary Detention had undertaken a "preparatory" visit to China but was concerned that it was not submitting new cases to the Chinese authorities in view of the "projected" visit. Lastly, his organization was very concerned about the fate of Ngawan Choephel, a Tibetan monk arbitrarily detained by the Chinese authorities and sentenced to 18 years' imprisonment on charges of spying.

35. Mr. NAKKAWITA (Sri Lanka) said that his Government shared the Commission's concern about cases of torture and disappearance in custody and supported its action concerning the independence of judges and lawyers, the rights to freedom of opinion and expression, and the rights of children in detention. Its spirit of cooperation with regard to the international mechanisms for the protection of human rights, the international humanitarian organizations and the main NGOs testified to attachment, like that of all self-respecting democratic Governments, to the promotion and protection of human rights. Moreover, in paragraphs 51 to 54 of his report (E/CN.4/1997/31), the Special Rapporteur on freedom of opinion and expression observed, with reference to a complaint by a Member of Parliament in Sri Lanka, that the necessary safeguards were observed there. The authorities also made every effort to enable journalists and independent observers to visit the north and east of the country, despite the severity of the insurgency and terrorism prevailing there. The Government had given concrete expression to its commitment by acceding to the Convention against Torture in January 1994. In a number of instances, victims of torture had obtained redress through the law courts.

36. While the Government had taken steps to observe internationally recognized norms, the terrorist groups, and particularly the Liberation Tigers of Tamil Eelam, unfortunately did not do the same.

37. He wished to add some information to that contained in the report of the Working Group on Enforced or Involuntary Disappearances. The People's Alliance Government had established three commissions in January 1995 to inquire into involuntary disappearances and abductions since 1 January 1988 with a view to ensuring the accountability of law-enforcement officials and members of the armed forces. The commissions were mandated to inquire into evidence to establish the truth of the allegations, locate missing persons, identify those responsible and ascertain what legal action could be taken. Cases of deaths following abductions or involuntary disappearances were also assigned to those commissions. They held sittings in various parts of the island in order to facilitate the access of the public. The outcome of the investigations and the action taken would be communicated to the Working Group.

38. The Government was perturbed by recent allegations of disappearances in the Jaffna peninsula. Up to 28 February 1997, it had received 1,652 complaints from a variety of sources including ICRC, the Working Group and Members of Parliament; 857 of which had been found to be duplications. It had been able to trace 72 persons and the other investigations were continuing. As a result of a personal directive by President Kumaratunga, the Ministry of Defence had set up a board of investigations which had already begun activities in Jaffna. In the meantime, the Human Rights Task Force an NGO established in 1991 to monitor observance of the fundamental rights of persons held without a judicial order, was in the process of establishing its tenth regional office in Jaffna. In her concern to ensure the promotion and protection of human rights and security of persons, the President had recently issued a directive to the armed forces reiterating the conduct to be observed in the implementation of emergency regulations and the Prevention of Terrorism Act. Among other provisions, every arrest had to be reported within 48 hours to the Task Force, whose members were guaranteed access to the detainees.

39. The Constitution and national legislation provided for other mechanisms to alleviate the problems of degrading treatment and enforced disappearances. On 14 March 1997, the Court of Appeal had observed, in a habeas corpus application, that the rule of law and the freedom and safety of the individual would be completely nullified if any person in authority could cause the disappearance of anyone taken into custody and then deny the arrest or any knowledge of the person concerned. The court had ordered the two police officers held responsible for the disappearance of a person arrested in 1989 to pay compensation to the victim's family. With reference to recent allegations that returning Sri Lankan asylum-seekers had been subjected to arbitrary detention and maltreatment on their arrival, he quoted an information note issued by UNHCR on 1 March 1997, according to which rejected asylum-seekers arriving at Colombo airport were in general treated fairly and humanely by the authorities.

40. The steps taken by his Government to observe human rights norms must be viewed in the context of a conflict which was not of its seeking. It was the constant endeavour of its authorities to improve the situation in order to create an environment of peace and harmony where human rights abuses would become a thing of the past.

41. Mr. KARTASHKIN (Russian Federation) said that ideas such as "democracy", "the rule of law" and "human rights and fundamental freedoms" had no meaning if there was no independent and impartial judicial system. Every victim of a violation of his rights and fundamental freedoms had to be convinced that he would be able to obtain redress before the courts.

42. That was the key to the ongoing judicial reform in the Russian Federation, one of the main aspects of which concerned the improvement of the conditions for the execution of sentences, particularly in custodial establishments, with regard to which his Government was endeavouring to implement a modern and humane policy. It had brought out a new Criminal Code on 1 January 1997 and the new Criminal Executive Code would enter into force in the near future. Article 7 of the new Criminal Code prohibited the use of punishments or sentences causing physical suffering or impairing human dignity. Unfortunately, the legislative improvements had not yet had any impact on the conditions of detention; the main problem was overcrowding in pre-trial detention centres, a legacy of the totalitarian regime, whereas the situation in other penitentiary establishments was, on the whole, in keeping with the Standard Minimum Rules for the Treatment of Prisoners, although some improvements were still necessary. The new Russian Criminal Code restricted the number of offences carrying a prison sentence and, for the first time, provided for the possibility of release on bail, which would relieve the problem of overcrowding in custodial establishments; the reform of the legal system was also intended to reduce procedural delays. Meanwhile, the programme for the reform of the prison system adopted in 1996 had already led to a significant reduction of the number of persons in pre-trial detention.

43. The Russian Federation's entry into the Council of Europe had opened up new prospects for humanizing the conditions for the execution of sentences. A working group on the reform of the Russian Federation's prison establishments had been set up under the auspices of the Council of Europe and experts from that body had made a major contribution to drafting the Criminal Code and the

Criminal Executive Code as well as the draft code of criminal procedure. The only means of dealing with the crisis in the system of re-education through work, however, was to adopt specific measures, some of them on an emergency basis.

44. The Commission on Human Rights under the President of the Russian Federation had, at its February meeting, put forward a number of specific proposals in that regard: a reduction in the number of offences carrying a prison sentence, shortening the pre-trial detention period and extension of the scope of replacement measures in respect of persons suspected of or charged with minor offences; it had also recommended the preparation of a bill to add the concept of "torture" to the Criminal Code, in accordance with a recommendation by the Committee against Torture during its consideration of the second report of the Russian Federation in November 1996. The institution of an ombudsman for human rights, with special responsibility for the observance of human rights in the prison system and the armed forces, was a very hopeful move. However, the legislative initiatives had to be backed up by adequate and sustainable financial resources.

45. The Russian Federation would continue to report to the Special Rapporteur on questions related to torture, Mr. Rodley, whose cooperation it particularly appreciated, on the state of progress of those reforms and the problems encountered.

46. His Government was concerned by the fact that no new States had ratified the Convention against Torture since the Commission's previous session. No effort should be spared to ensure the universal acceptance of that international instrument, which was of the greatest importance for human rights. His Government was convinced that an open dialogue with the expert members of the Committee against Torture would help to increase the protection of individuals against torture and other cruel, inhuman or degrading treatment or punishment. His delegation was taking an active part in drafting the optional protocol to the Convention against Torture and hoped that the Working Group would speed up its activities. The preventive system envisaged for monitoring observance of human rights in places of detention could be a model for the future activities of the human rights monitoring mechanisms established by the United Nations.

47. Mr. ETIMA (Uganda) said that, contrary to the common perception that criminals should not enjoy the same rights as other individuals, any person deprived of his freedom should, in accordance with article 10 of the International Covenant on Civil and Political Rights and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), be humanely treated with a view to his reformation and social rehabilitation. To achieve that objective and thus prevent risks of recidivism, detainees must be treated with respect for their human dignity.

48. It was in that spirit that his Government had designed a human rights training programme for judges, prosecutors and police officers, and had undertaken the improvement of detention facilities with the help of the United Kingdom, Germany, Austria, Sweden, Norway, France, ICRC and the United Nations Development Programme (UNDP).

49. Moreover, to further a better understanding of the Tokyo Rules in the African continent, it had organized an African conference in collaboration with Penal Reform International in 1996, which, after considering various issues, such as the crisis of prison systems in Africa, prison work, the rehabilitation of prisoners and non-custodial sentences, had adopted the Kampala Declaration.

50. Lastly, his Government had recently established a Permanent National Human Rights Commission which had judicial powers and could take action, inter alia, in cases of unjustified detention; in carrying out its task it had the valuable assistance of the High Commissioner for Human Rights. In conclusion, he asked the international community to support the efforts of the African Commission on Human and Peoples' Rights.

51. Ms. GHOSE (India) said that she hoped that the Commission's documents would be distributed before the start of the session so that participants could study them in detail. The Commission should also ensure that the rapporteurs it had appointed had adequate funding to fulfil their mandates or else consider reducing their number. It might, perhaps, be necessary to examine cases of overlapping mandates and possibly combine them.

52. She regretted that some members took undue advantage of the consideration of reports on the situation of human rights in specific countries to promote the foreign policy of their Governments.

53. Her delegation generally shared the opinion expressed at the 25th meeting by the Special Rapporteur on freedom of opinion and expression, that restrictions on publishers and media indicated situations where there was a threat to human rights, but considered that the aspect should receive further study. There were occasions - for example, the free access of children to pornography and incitement to violence, hatred and discrimination, especially racial discrimination - when that freedom might need to be restricted. In that connection, her delegation welcomed the intention of the Special Rapporteur to work more closely with the Special Rapporteur on violence against women. Her Government was considering measures, including legislation, to provide the public with access to information on governmental decision-making, with only rare exceptions. The courts had ruled that the airwaves belonged to the public and a bill to set up a statutory body to regulate the airwaves, which would be privatized, was in preparation.

54. Her delegation considered that the Working Group on Arbitrary Detention should restrict itself to the examination of cases of persons held without trial or following a rigged or unfair trial. The Working Group did not have the authority to go into the substance of national legislation or the functioning of different judicial systems. It could not question a judgement after a trial had taken place in which the rights of defence had been respected. The question of arbitrariness arose only if the due process of law had not been followed. The Commission must therefore clarify the mandate of the Working Group. It must also decide whether, as the Chairman of the Working Group had asserted, "detention" included "imprisonment", bearing in mind that the original intention had been to make a distinction between the two. It must also ensure that the activities of the Working Group did not duplicate those of the treaty bodies and special rapporteurs.

55. With reference to the independence of judges and lawyers and extrajudicial, summary or arbitrary executions, her delegation was disappointed that the two Special Rapporteurs on those issues had not found it convenient to undertake their mission to Nigeria as requested by the Commission at its fifty-second session. It was not for the Special Rapporteurs to lay down conditions for their visits; they should avail themselves of every opportunity provided to make in situ visits with a view to reporting to the Commission. It was for the Commission and the Commission alone to decide thereafter what action should be taken. In any case, the invitation to visit Nigeria was still open and it was to be hoped that the Special Rapporteurs would undertake that visit as soon as possible.

56. In his ninth annual report (E/CN.4/Sub.2/1996/19), the Special Rapporteur on the question of human rights and states of emergency stated that he expected more detailed information from India. Her Government would have been happy to provide such information if he had requested it. In any case, lists of States which had proclaimed, prolonged or repealed states of emergency were hardly of current relevance. In the case of India, curfews declared in 1992 and 1993 had been cited, although they no longer existed. It would be more useful if the Special Rapporteur could restrict himself to considering current situations and if the report on the issue was submitted only every three years.

57. Her Government was considering acceding to the Convention against Torture but must obtain the agreement of all the Indian states to do so because of the country's federal structure. Contrary to the impression given by the Special Rapporteur on questions relevant to torture in his report (E/CN.4/1997/7), the action taken against members of the security forces for acts of torture had been made public and had been reported to several of the Commission's mechanisms.

58. It was important that the Commission should ensure that the mechanisms it had set up had the means to perform their tasks and that it should continually review their functioning, so as to rationalize them and avoid duplication. She would encourage the bodies in question to develop a constructive dialogue with States.

59. Mr. Yong-Shik HWANG (Republic of Korea), having commended all the special rapporteurs and working groups concerned with agenda item 8 on their excellent work, said that the report to the Commission at its previous session of the Special Rapporteur on the right to freedom of opinion and expression, following his 1995 mission to the Republic of Korea, had helped the Government to continue its efforts to promote human rights. It was to be hoped that the spirit of cooperation and dialogue between Governments and the Special Rapporteur would be reinforced in the future.

60. With reference to the allegations contained in the report of the Special Rapporteur on questions relevant to torture (E/CN.4/1997/7), he said that his Government had replied to the Special Rapporteur in detail as well as during the discussions following the submission of the initial report of the Republic of Korea to the Committee against Torture in November 1996. Although his

Government was not in full agreement with all the conclusions and recommendations of the Committee against Torture, it would take them into due account.

61. The Working Group on Arbitrary Detention had concluded that the detention of the persons mentioned in its decisions Nos. 49/1995, 25/1996 and 2/1996 was arbitrary. His Government did not share that opinion. The persons in question had been convicted of crimes such as espionage, formation of anti-State organizations, instigation to illegal strikes, and so forth. Some of them had been released on bail, had received suspended sentences or had been amnestied. The Working Group would receive detailed information on such new developments in the near future.

62. With regard to the allegations made by an NGO some days previously on the subject of student demonstrations the previous year and the National Security Act, they were either factually wrong or represented a biased view based on unreliable sources.

63. His Government was irrevocably committed to democratic values and human rights, as its accession to the Convention against Torture in 1995 bore witness. Much had still to be done but his people and Government maintained a resolute determination to persevere. The National Assembly and the Korean press and media, whose freedom of expression was fully guaranteed, would not fail to denounce human rights violations. The Government was ready to accept all constructive criticism, particularly from the United Nations, which could assist it in better serving the cause of human rights.

64. Mrs. IZQUIERDO (Uruguay) said that the Working Group on Arbitrary Detention had made a major contribution to bringing to the attention of the international community to what extent the right to the freedom of the individual was observed and how that high priority right had evolved.

65. Any arbitrary detention, whether it took place before or after a judgement, was a violation of the Universal Declaration of Human Rights (art. 10) and other relevant instruments. Detention should, initially, be regarded as arbitrary if it was not properly substantiated and, subsequently, if the decision to impose it had violated the rules of due process.

66. It also emerged from the work of the Working Group that, in most cases, an arbitrary deprivation of freedom was accompanied by the indirect violation of other fundamental rights such as the right to freedom of expression and association and the right to a fair trial. The fact that a person was ultimately sentenced following a trial in which the principles of the impartiality of justice and respect for the right of defence had been flouted could not cover up the arbitrary nature of the deprivation of freedom.

67. Her delegation supported the initiatives to extend the mandate of the Working Group so that it could continue its important task.

68. Mrs. PEREZ-DUARTE Y NOROÑA (Mexico), having commended the various special rapporteurs and working groups on their reports under agenda item 8 and on their crucial action on behalf of human rights, went on to the question of updating the Convention on the Rights of the Child with respect to the

detention of juvenile delinquents. Her delegation considered that every effort should be made to help young people, who were particularly vulnerable, to avoid a descent into crime and to facilitate, by means of measures to guide and protect, the reintegration into society of those who transgressed the law.

69. With regard to enforced or involuntary disappearances, her Government would continue to collaborate closely with the relevant Working Group to clarify the cases indicated by it or by other Commission mechanisms. The action taken by the procurator's offices of the various Mexican states and by the National Human Rights Commission, as part of its special programme on alleged disappearances, had already enabled many cases to be elucidated.

70. To strengthen the independence, impartiality and efficiency of the judiciary, which had the responsibility inter alia of ensuring the constitutionality and legality of all government actions, a wide-ranging reform of the Federal Judiciary had been undertaken in 1994, including the establishment of transparency in the appointment of judges and magistrates and the creation of a Federal Council and local magistrates' councils as administrative and ethical monitoring bodies.

71. Her Government was persuaded that, in a State subject to the rule of law, the administration of justice, the combat against crime and the maintenance of public order were not incompatible with full respect for the human rights of all persons. During the past seven years, not less than 2,567 public officials had been punished for offences connected with torture. That fact testified to the Government's desire to strengthen the rule of law and respect for human rights.

72. Mr. AKRAM (Pakistan) said that his Government fully supported the efforts of the international community to put an end to the evil practice of enforced and involuntary disappearances.

73. There were clear constitutional safeguards in Pakistan against arbitrary arrests and detention. Article 14 (a) of the Constitution prohibited the use of torture to obtain confessions and article 10 listed the guarantees of detainees. In his address to the nation on 23 March 1997, shortly after assuming office, Prime Minister Nawaz Sharif had committed himself to the implementation of those provisions. The torture and ill-treatment of detainees on police premises would be eliminated and public opinion would be mobilized to expose such practices. State institutions would be reformed with a view to closer monitoring of acts by the police. Violations committed against women would be considered serious crimes and persons involved in gang rape would become liable to the death penalty. Lastly, quick and inexpensive redress would be provided at the grass-roots level, particularly to persons subjected to acts of cruelty and oppression. In order to implement all those reforms, the Government was seeking the cooperation of all sectors of society, and taking action to familiarize the public at large with the concept of human rights and provide better information on the remedies available.

74. Missions to Pakistan by international observers supplemented the Government's own efforts to strengthen democratic institutions and protect human rights. It was in that context that the Special Rapporteur on questions relevant to torture had been invited to Pakistan the previous year. While the

Government did not agree with everything he said in his report (E/CN.4/1997/7/Add.2), it would like to continue the dialogue with him on the cases brought to its attention and would take account of his recommendations in the context of the reforms envisaged by the new Government.

75. His delegation welcomed the Special Rapporteur's comment that, in Pakistan as a whole, there was a preference for respect for human dignity.

76. The Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy had, in his report (E/CN.4/1997/32), welcomed the Pakistan Supreme Court's landmark decision on the constitutionality of the appointment of ad hoc judges. In the light of recent developments, the autonomy and independence of the judicial system should not be in doubt. The higher judiciary in Pakistan had been encouraged to take up suo moto complaints received from friends or relatives of detainees.

77. His delegation regretted that the special rapporteurs and human rights machinery all continued to report systematic recourse to torture, inhuman and degrading treatment and cruel punishment in the Indian-occupied province of Kashmir. Enforced disappearances continued to take place and human rights militants were being subjected to extrajudicial executions. Human rights advocates were harassed, persecuted, imprisoned and tortured, and their relatives murdered to intimidate them. Persons returning to Kashmir after attending the Commission's sessions had been killed, tortured, interrogated or brutally harassed. The Commission on Human Rights could not ignore the systematic violation of human rights in the province and must redouble its efforts to put an end to them. Such action would help to relieve tensions and improve relations between Pakistan and India and would help to create a more conducive environment for a fair settlement of the Jammu and Kashmir conflict by peaceful means in accordance with the freely-expressed desires of the population.

78. As a general rule, people fled from places where human rights were threatened to places where they hoped to find safety. Over the years, Pakistan had welcomed thousands of refugees from Kashmir, Afghanistan and other countries. As things stood, it was hosting nearly half a million Afghan refugees. Although the 17 years of war in Afghanistan had had very serious consequences for Pakistan's economy and society, the authorities had constantly protected the rights of refugees.

79. Some neighbouring States, taking advantage of Pakistan's problems, were organizing terrorist operations in various cities in Pakistan so as to divert attention from their repressive policies and to destabilize the country. The authorities were determined to combat that phenomenon in accordance with the spirit and letter of the Constitution and laws and Pakistan's international obligations.

80. Mrs. SYAHRUDDIN (Indonesia), referring to the report of the Working Group on Arbitrary Detention (E/CN.4/1997/4), said that her Government, in a spirit of cooperation, had faithfully replied to the communications concerning several alleged cases of arbitrary detention in the country and had given details on the handling of those cases by the authorities. Such handling had been in full conformity with domestic law and the Body of Principles for the

Protection of All Persons under any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173. Her delegation noted, however, that the Working Group had taken the arbitrary decision to classify them as cases of arbitrary detention.

81. It was surprising that, among the cases of arbitrary detention mentioned in the report, there were none that concerned developed countries, which appeared to be totally free of such practices. It might be wondered whether that was not due to the fact that the Working Group had departed from the rules concerning the consideration of communications set out in its original mandate (General Assembly resolution 1991/42, para. 2). Such a development was a matter of extreme concern. The time had come for the Commission to consider the issue and to instruct the Working Group to conform strictly to its original mandate. Her delegation shared the views expressed by others which had suggested looking into the Working Group's methods.

82. The report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1997/34) was neither reliable nor credible when it portrayed a worsening situation in East Timor, inevitably leading the reader to the wrong conclusions. According to paragraph 195, there had been an increase in the number of disappearances in East Timor in 1996. According to annex III of the same report, however, only nine cases had been reported for the whole of Indonesia in 1996. Such assertions and contradictory figures could only lead to doubts as to the reliability of the information supplied in the report, which were not calculated to enhance the credibility of the Working Group. In fact, far from deteriorating, the situation in the province had improved in 1996.

83. Her delegation wished to make some comments on remarks by an NGO at an earlier meeting, quoting a written statement from the Diocese of Dili, to the effect that detainees had been released after being brutally treated by "members of the Indonesian forces". The authors of the allegations had certainly been misinformed, since the security services in the province would not risk practices of that nature which would only further the cause of anti-integrationalist elements. She asked whether it was possible to accept at face value the statements of persons who had just been released and who could not produce witnesses to support their claims.

The meeting rose at 1.10 p.m.